

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 1070/2002.

Union of India
v
M/s. Indial Oil Corporation Ltd.

Date of Judgment: 1st September, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. Ghanshyam Brijwasi for the appellant.
Mr. K. Verma for the respondent.

By Court:

The appellant has challenged the order dated 12.4.02 passed by the Railways Claims Tribunal, Jaipur whereby the learned Tribunal has granted a compensation of Rs. 49,938/0 in favour of the claimant-respondent.

The brief facts of the case are that the respondent had filed a claim petition wherein they had stated that they had booked two Tank Wagons, including BOTL No. SR-3941 containing 41060 liters of petrol from the siding of the Corporation from Sabarmati to Hanumangarh, Rajasthan. The said consignment was booked vide Railway Receipt dated 10.4.97. However, the Tank Wagon no. SR-39413 was not received at the destination. Therefore, the railways authorities

at Hanumangarh issued a non-delivery certificate for the said wagon on 8.7.97. Subsequently, the respondent served a claim notice under Section 106 of the Railways Act upon the appellant on 19.9.97. When the appellant inquired as to the whereabouts of the Railway wagon, it was discovered that the said wagon was detached near Sabarmati and was lying at the Railway Station Nandel Deh Gam for the purpose of transshipment. The said wagon eventually reached the destination on 22.11.97. Considering the abnormal delay as well as the fact that petrol tends to evaporate naturally, the respondent company demanded for open delivery. Since there was a short delivery of 2528 liters of petrol, the Railways issued a certificate of short delivery. Thereafter the respondent filed a claim petition before the Tribunal.

The appellant filed its written statement wherein it claimed that the consignment was loaded at the siding of the respondent, the said consignment was sealed by the respondent. Neither the loading nor the contents of the quantity was checked by the railway staff. Moreover, the contents was transhipped in the presence of the respondent and the

consignment was re-sealed in its presence. The consignment reached the destination in sealed condition. Therefore, the Railways is not liable for the short delivery of the consignment. After hearing both the sides, vide order dated 12.4.2002 the learned Tribunal directed the appellant to pay a compensation of Rs. 49.834/- along with interest @ 8% per annum from the date of the filing of the claim petition till its realisation. Hence, this appeal before this Court.

Mr. Ghanshyam Brijwasi, the learned counsel for the appellant, has strenuously repeated the same contentions which were raised by the appellant before the Railways Tribunal. According to him since the consignment was loaded, re-transshipped and delivered in sealed conditions, the Railways is not liable for the short delivery.

On the other hand, Mr. K. Verma, the learned counsel for the respondent, has contended that because of the fault of the Railways, the consignment could not be traced for seven months. During this interim period, the short delivery was caused because petrol tends to naturally evaporate. Thus,

the short delivery is caused squarely because of the negligence of the Railways. Furthermore, the Railways has issued a short delivery certificate at Hanumangarh which clearly reveals a shortage of 2528 liters of petrol. Hence, the Tribunal has legally awarded the compensation.

We have heard both the learned counsels and have perused the impugned order.

It is, indeed, the duty of the Railways to ensure that the consignment reaches the destination within the shortest time. The Railways should have ensured that the consignment reaches the Hanumangarh within a reasonable time. However, in the instant case, the consignment was misplaced for a period of seven months. The petrol, by its very nature, tends to evaporate. Considering the fact that the wagon was lying in a railway yard for seven long months, the petrol was bound to evaporate during this period. Hence, the shortage has been caused by the negligence of the Railways. As a Bailee, the Railways is duty bound to take care of the consignment. It has failed to observe the said duty. Hence, the Tribunal has validly

granted the compensation to the respondent.

In the result, there is no force in this appeal. It is,
hereby, dismissed.

MRG.

(R.S. CHAUHAN) J.